for The Defense

Volume 6, Issue 4 ~ ~ April 1996

The Training Newsletter for the Maricopa County Public Defender's Office ⋈ Dean Trebesch, Maricopa County Public Defender

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Prosecutors' Use of Excessive Force

by Leonard T. Whitfield, Deputy Public Defender

Can the prosecution be guilty of "use of excessive force"? Recent cases have expanded the doctrine of vindictive prosecution, and the Arizona Court of Appeals has stated that vindictive prosecution can result in the dismissal of all charges.

I first decided to make a claim of vindictive prosecution when at sentencing the prosecutor asked the court to dismiss a jury finding of dangerous in an aggravated assault case. The prosecutor felt that since the defendant already had two prior non-dangerous convictions, at sentencing he could convince the court to sentence the defendant to at least a presumptive term of 11.25 years instead of the presumptive term of 7.5 years under the current dangerous sentencing scheme. Shortly after this case, another defendant was indicted for a violation of A.R.S. §28-692(a)(1), A.R.S. §28-692(a)(2) and A.R.S. §28-697(a)(1) on both counts. Over two months later, this same prosecutor again went before the grand jury and had the defendant re-indicted for the same incident under A.R.S. §28-692(a)(1), A.R.S. §28-692(a)(2), and A.R.S. §28-697(a)(2) on both counts (alleging three prior DUI convictions). No plea offer had been made between the two indictments. When I asked the prosecutor why he filed the new charges, his reply was, **"So I can prejudice the hell out of the defendant in opening statement."** This response was witnessed by another deputy county attorney who responded, "Way to go." In addition, the prosecutor said that he was going to file a motion to consolidate to be heard along with our motion to continue. We filed the motion to continue shortly after receiving notice of the second indictment, and shortly before the scheduled trial date.

In the motion to dismiss, I cited three cases: *State v. Tsosie*, 171 Ariz. 683, 832 P.2d 700 (App. 1992); *United States v. Robison*, 644 F.2d 1270 (9th Cir. 1981); and *United States v. Alvarado-Sandoval*, 557 F.2d 645 (9th Cir. 1977).

The *Tsosie* case is particularly instructive. It stands for the proposition that the defendant bears the initial burden of establishing the appearance of prosecutorial vindictiveness, but once established, **the burden shifts to the prosecution to show that the decision to prosecute was justified.** In determining the existence of prosecutorial vindictiveness in a pretrial setting, the critical question is whether the defendant has

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shown that all of the circumstances, when taken together, support a **realistic likelihood of vindictiveness** and therefore give rise to a presumption. Should the state fail to rebut the presumption of vindictive prosecution, all charges (including the "non-vindictive" ones) are subject to dismissal. The court noted that if in cases of vindictive prosecution the trial court could only dismiss the additional charge, the prosecutor would have nothing to lose by acting vindictively.

Many times prosecutors take the position that "anything goes" in plea negotiations. They usually start out by saying that the defendant is not legally entitled to an offer, and that "there is a long line of federal cases" which support the "anything goes" theory, [the leading case being *Bordenkircher v. Hayes*, 434 U.S. 357, 98 S. Ct. 663, 54 L.Ed 2d 604 (1978)]. In reality, several Federal cases support the defendant. Defense counsel (and prosecutors) would do well to gain a full understanding of the importance of *United States v. Alvarado-Sandoval*, supra. *Alvarado-Sandoval* involved a situation where the defendant indicated at the arraignment that, rather than plead to a misdemeanor charge of unlawful entry of an alien, **he wanted to investigate the possibility** of filing a motion to suppress the search. Six days later the prosecutor filed a two-count felony indictment. In reversing the defendant's conviction, the court said that the key issue is the "appearance of vindictiveness, not vindictiveness in fact . . . ," and even though the defendant did not file a formal motion to suppress, his expressed "intention to proceed under the misdemeanor charge" was dispositive. Recently, the Greenlee County Attorney's office took the position that if the defendant filed any pretrial motions, no plea offers would be made, and the defendant would have to go to trial or plead to the charge as filed. After this policy was challenged in court, Judge Allen G. Minker ruled on December 13, 1995, that the county attorney's policy was "impermissible" and "shall not be utilized."

In reversing the defendant's conviction, the court said that the key issue is the "appearance of vindictiveness, not vindictiveness in fact..."

Prosecutors have a tendency to argue that *Bordenkircher* and *United States v. Goodwin*, 457 U.S. 368, 102 S.Ct. 2485, 73L.Ed 2d 74 (1982) stand for the proposition that vindictive prosecution can never occur in a pretrial setting. This is clearly not true, as stated in *Goodwin* itself. See also *Adamson v. Ricketts*, 865 F.2d 1011 (9th Cir. 1988) (*Adamson III*), particularly footnote 8 on page 1018. See also *Tsosie* and the *Meyer* case discussed therein. In addition, at least one court has questioned the validity of *Goodwin* in a situation involving mandatory sentencing. See *United States v. Holland*, 729 F.Supp, 125 (D.D.C. 1990), footnote 16, page 129.

Prosecutors argue that the defendant must exercise some "procedural right" before a claim of vindictive prosecution can be made. What about the situation where the defendant simply decides to exercise his/her right to go to trial? (What could be a more basic right than a trial by jury?) *Alvarado-Sandoval* would indicate that no formal pretrial motions to suppress or dismiss are required. One question which continues to linger is whether the defendant has to give actual notice that he intends to go to trial or whether he may simply say nothing and wait for the scheduled trial date. The reported cases all seem to involve situations where the defendant gave actual notice of his intent to go to trial before the government acted vindictively. Such an analysis gives rise to an additional question. Is a motion to continue an exercise of a basic procedural right and/or actual notice of intent to go to trial? No reported cases addressing this issue were found.

Mandatory sentencing schemes at the state and federal levels may provide an excuse for the courts to find vindictive prosecution. The factual scenario in *Tsosie* would indicate that the defendant would not suffer increased exposure for conviction on the additional

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for The Defense is the monthly training newsletter published by the Maricopa County Public Defender's Office, Dean Trebesch, Public Defender. ***for The Defense*** is published for the use of public defenders to convey information to enhance representation of our clients. Any opinions expressed are those of the authors and not necessarily representative of the Maricopa County Public Defender's Office. Articles and training information are welcome and must be submitted to the editor by the 10th of each month.

"vindictive" count, under Arizona's current sentencing scheme. Could a defendant argue that while his current sentence may not be greater for being convicted of two counts instead of one, that future sentencing schemes may be even harsher than the current scheme, and therefore, he is prejudiced by the prosecutor's vindictive conduct in charging a second count? Without speculating on the success of such an argument, it would appear that *Tsosie* would still be good authority to rebut a prosecutor's claim that he is not being vindictive because the defendant does not have increased exposure due to additional charges.

What does the future hold for claims of vindictive prosecution? Possible issues that may be ruled upon could include the following:

(1) Could the prosecutor be vindictive if he/she insists on prosecuting a case where the alleged victim does not desire prosecution and the alleged victim's testimony is exculpatory?
(2) Could the prosecutor be vindictive if he/she withdraws from a plea agreement entered in justice court simply because the prosecutor in justice court violated a stated county attorney's policy?
(3) Could the prosecutor be vindictive if he/she clearly overcharges the case in order to get the defendant to enter a guilty plea to a lesser charge?
(4) Could the prosecutor be vindictive if he/she pursues charges knowing that crucial evidence is not available (e.g., evidence destroyed or missing or key witnesses are not available)?
(5) Could the prosecutor be vindictive if he/she "ups the ante" after defense counsel files a motion for a competency examination?
(6) Could the prosecutor be vindictive if he/she fails to give a deadline for acceptance of a plea offer and arbitrarily "ups the ante" simply because too much time had elapsed?
(7) Could the prosecutor be vindictive if he/she "holds back" on filing charges, gets the defendant to plead guilty to the current charges, and after sentencing, files the "hidden" charges?

I am sure that you can think of many additional situations where a claim of vindictive prosecution may be warranted. When you consider the fact that *Shepard's* has 1,324 citations for *Bordenkircher* and 574 citations for *Goodwin*, vindictive prosecution is clearly fertile ground for litigation. Ω

Editor's Note: This is an update of an article originally published in The Defender in October, 1995. To the extent that it contains material from that article, it is reprinted with permission from AACJ and The Defender.

DEEP *#+!
Sanctions for Late Disclosure

by James H. Kemper,
Deputy Public Defender--Appeals Division

If I have learned anything in years of practicing law it is that you do not want Stanley G. Feldman mad at you, and you definitely do not want the entire Supreme Court mad at you. When the Supreme Court is mad at you it is not very long before the State Bar is mad at you. When the Supreme Court and the State Bar are both mad at you at the same time you have a very serious personal problem; you are in Deep *#+!. I was reminded of these fundamental principles on February 22nd when I argued *State v. Killean*; the court was mad indeed and the only solace I could find was that they were not mad at me. At least, I don't think they were.

The lawyer the court was mad at was the one who represented Mr. Killean in the trial court. The facts were that the defendant arrived, late in the evening, at Sky Harbor. He got off the shuttle bus from Tucson, carrying a suitcase. For reasons that are not entirely clear the gimlet-eyed narcs who were at that very moment staking out the concourse were at once suspicious. One watched him go to the America West ticket counter. One went and got his suitcase. The cops did what they call the "squeeze and sniff." A vegetable odor exited Mr. Killean's suitcase, leading the officers to "detain" him. Finally the intrepid Crackers arrived upon the scene and when he "alerted" to the large package of marijuana in the luggage Mr. Killean was, alas, arrested.

Although Mr. Killean hired private counsel no notice of defenses was ever filed. Then, on the very morning the trial began, defense counsel announced that he had three witnesses--basically record custodians--he would like to present, along with various documents to be introduced through them. These, he asserted, would show that his client was a dupe; they would support a defense that another man, who had never been charged, had deceived the defendant into transporting the suitcase and its contents, which the defendant didn't know about, back East.

The prosecutor protested like a scalded cat, as they are wont to do. There had been no timely disclosure, she said. She asked that the witnesses and the documents be precluded as a discovery sanction. The defense lawyer offered the lamest of excuses for his tardiness. The learned trial judge temporized, but this

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only exacerbated the problem because the lawyer then made, I must concede, a nifty opening statement, the theme of which was "no good deed goes unpunished." And during this opening statement he promised the jury the very evidence about which the trial judge was at that same moment dithering.

But when he did--much later--make up his mind, the judge granted preclusion. Yet he specifically found that the late disclosure was not in bad faith. The jury, without the promised evidence, convicted. Mr. Killean was sent to the penitentiary.

On appeal, the blind squirrel struck again.[1] Writing for the panel majority Judge Voss reversed on the preclusion issue. *State v. Killean*, __Ariz.__, 907 P.2d 550 (1995). Although he found the law to be set forth in *State v. Smith (Joe U.)*, 140 Ariz. 355, 681 P.2d 1374 (1984) he, in a manner of speaking, improved on it. In *Smith* the bad faith of the lawyer, or lack of it, was set out as one of four factors to be considered. Judge Voss, after balancing our procedural rules out against Killean's constitutional right to present a defense, made bad faith an absolute. He wrote,

> We therefore hold that a criminal defendant's vital evidence can be precluded as a sanction for a discovery violation only where the conduct of defense counsel and/or the defendant constitutes bad faith or willful misconduct.

Killean, 907 P.2d at 561.

Clearly the high court is exercised about late disclosure by defense lawyers.

Since the trial judge had said (a factual finding) that there was no bad faith the court of appeals granted Killean a new trial. And someone filed with the State Bar a complaint against the dilatory lawyer.[2]

The Arizona Supreme Court granted the state's Petition for Review. In doing so it ordered that the case be argued on the papers already filed, an unusual step. Clearly the high court is exercised about late disclosure by defense lawyers. As this is written the case is still not decided and your guess as to what will happen is certainly as good as mine.

There is, however, a message in what has already happened. It is that lawyers should begin to take their discovery obligations quite seriously because there are some very dire consequences to be suffered. Some of them may be suffered by the client, but some of them may be suffered by the lawyer, which is as it should be. Rule 15.2 (b) and (c) make it clear that the defense lawyer must disclose everything within 20 days after the arraignment. Considering the size of this office and the glacial pace at which paperwork moves through the system this is without doubt a difficult time line to comply with. But try one must. It is probably a fair statement to say that no one is going to punish you or your client when you disclose in 22 days, or 24 days, instead of 20, that sort of thing. The lawyer's attempt to comply with the 20-day requirement should be coupled with constant awareness of the continuing duty to disclose mandate of Rule 15.6. The key word in that rule is "promptly."

If the Supreme Court reverses the reversal of *Killean* and reinstates the decision of the trial judge does that mean that, in the future, prosecutors too will have their feet held to the sanctions-for-late-disclosure fire? Why would you think a silly thing like that? If you have worked here for more than a nanosecond and you still think this is a two-way street then you need to compare *Killean* with *State v. Krone*, 182 Ariz. 319, 897 P.2d 621 (1995). In that case, on the last business day before trial, the prosecutor disclosed a videotape to the defense. The tape had to do with crucial bite mark evidence to be given by the state's "expert." Hence, while the precluded witnesses in *Killean* were record custodians whose impartiality could not seriously be questioned, and whose existence was inferable from the police report, the eleventh-hour evidence in *Krone* was created by a witness who was in the state's pocket and its existence was not reasonably inferable from anything. Thus it was the defense lawyer who moved for preclusion in *Krone* and, given these differences, you might think he got it. But you know better. Denied preclusion, the defense lawyer then asked for a continuance, but, of course, that was denied as well.

Mr. Krone did get a new trial, which did him no good according to recent news reports. What he lost was the chance that that jury might have acquitted him: Justice Martone himself wrote that "[w]ithout the bite marks, the State arguably had no case." *Krone*, 182 Ariz. at 320, 897 P.2d at 622.

Going beyond the facts of *Krone*, beyond the holding, there is as I read it no sense of outrage on display, even though the prosecutor had known about the tape for a week before he disclosed it. For conduct that is arguably less egregious the lawyer in *Killean* defends himself, at what I imagine is considerable cost, against

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discipline. Prompt disclosure may keep you from being the next to suffer from this double standard.

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1. Anyone not familiar with the blind squirrel may contact the author on the third floor.

2. Under Supreme Court Rule 61(a) matters of discipline are confidential. But in the absence of any case law the consensus seems to be that this privilege belongs to the lawyer who is complained against. Hence, I found this out because the lawyer called me up and told me.

Ω

Twenty-Three Notes, Observations, Criticisms and Suggestions for Trial Lawyers

by the Honorable Michael O. Wilkinson, Superior Court of Maricopa County

Trial Judges rarely get a chance to offer constructive criticism to the attorneys who practice before them. And yet in some ways they see so much advocacy that they are in the best position to give some neutral, pragmatic advice to them about what works with juries. Over the course of the last few years I have made some notes while watching trial lawyers at work in court. For the most part they are very good at their craft. They could be better. But other than the verdict and some jury comments, they get very little criticism upon which they can build. Indeed, if the verdict is in their favor, they may mistakenly believe that everything they did in trial was brilliant. If the verdict is against them they will usually complain about the jury's IQ, the Judge's wisdom or their client's unreasonableness. Rarely do they stop to analyze the way they try cases.

"A picture is worth a thousand words." Not in trial. The exchange rate is much higher.

So the following is an assortment of notes, observations, criticisms and suggestions from one trial judge. Take them in the spirit they are offered. They might help. They probably won't hurt.

1. Cross-Examinations -- "Sit down, shut up." The two most underused words in cross-examination are "No questions." Why does everyone have to be cross-examined? Why do attorneys have to give the witness another opportunity to bury them? Are they convinced they can break the witness; are they crazy? It's funny, you really can judge an attorney by how they cross-examine. And I would bet that there is almost a direct and precise relationship between the length of their cross-examination and their ability as an advocate. Three simple rules from The Irving Younger evidence lectures should always be in your mind. 1) Never ask a question you don't know the answer to on cross-examination. 2) Ask leading questions that keep the witness to "yes" or "no" answers. 3) Know what you can get from a witness, get it and get out.

2. Deposition Testimony -- This is deadly stuff. There should be a warning on all depositions. "Warning: No matter how hard you try, reading this to a jury will cause them to lapse into a coma." Just remember, when you say, "We can just read the deposition," you are really saying, "This testimony isn't important." Believe me that's what the jury will think of it. Avoid it at all costs.

3. Punitive Juries -- The following is a Golden Rule which all good trial attorneys live by and which I have never seen fail: A jury will reward you for being brief and interesting. They will punish you for being long and boring.

4. Replowing the Same Ground -- When you talk to jurors after a trial two complaints are almost unanimous. First, the delays in the trial when they have to just sit around. Second, they ask, "Why do the attorneys have to go over the same things again and again?" I tell them, "Well, they're never sure you're getting the point." "How stupid do they think we are?" they wonder. The message to the jury is clear and insulting. The penalty for jury abuse may be substantial.

5. Visual Aids -- "A picture is worth a thousand words." Not in trial. The exchange rate is much higher. I've never seen a juror not lean forward and take a much more attentive attitude when exhibits are shown to them. Photos, blow-ups of documents, models, maps, x-rays, videos--anything allowing the jurors to use their non-hearing senses. It is especially powerful when it breaks up the monotony of testimony. Look at your case and ask, "What can I put in the jurors' hands in the jury room?"

6. "If he's your witness, why is he so unprepared?" -- I am continually amazed by the almost daily occurrence of attorneys placing witnesses on the

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stand, showing them a document and receiving from the witness a puzzled look. I wonder to myself, "Haven't they talked? Haven't they looked at this document before? Why is he trying to make his own witness look so stupid?"

7. What time is it? -- Be aware of the clock. Fit your examination of witnesses to allow convenient stopping points at noon and at the end of the day. After noon and after 5:00 you are getting much less "quality attention" from the jury. If you are scoring points why do it when the jury is thinking about what they are going to eat, traffic or what's on TV tonight.

8. Witness Abuse -- Very few witnesses deserve to be treated rudely. Oh, a few are so nasty, ill-tempered or criminal to justify a little scorn. But if the witness's worst sin is that he is a tort feasor or contract-breaker or simply disagrees with your client's position, he should be handled at all times politely. The more upset you get with the witness, the more the jury will be convinced that the witness is killing you. The jury will empathize with the poorly treated witness and therefore increase the value of the testimony.

Corny as it may seem, you need to look at an opening statement as a contract with the jury.

9. Long-winded Closing Arguments -- Think about it for a moment. How many times in your "normal life" (as opposed to your "legal life") have you sat still and listened to someone lecture for an hour, an hour and a half? Except maybe for college courses, where you probably nodded off anyway, it is just an unnatural thing to do. Martin Luther King, Jr., Winston Churchill, John F. Kennedy, sure they could hold a crowd in the palm of their hand for an hour or more. But as someone else has said before me, "I knew John F. Kennedy and you're no John F. Kennedy." Remember your jury is composed primarily of TV watchers with TV watchers' attention spans. They are not by habit accustomed to sitting through long perorations, especially without being able to get up and go to the refrigerator.

10. Humor -- You are not as funny as you think you are. Don't get me wrong. Humor which springs spontaneously from something that happens in the courtroom is fine. But trying to be Jay Leno in front of the jury invariably fails. Continued attempts at humor give the jury the idea that this is not a serious matter for you or your client. Why should they take your argument seriously if you haven't taken the proceedings seriously?

11. Drawing the Sting -- It occurs to me that one of the first things the jurors decide is who they can trust. From your first questions on voir dire the jury is asking themselves, "Is this attorney honest?" (Let's face it, we've had some bad press; there are no presumptions operating in our favor in this regard.) After voir dire, you stand in front of them and give your opening statement. Why, oh why, would you, at this critical stage, not tell the jury the truth, the whole truth, and nothing but the truth? Instead attorneys routinely leave out of their opening facts they don't like. Then the other side gets up and says, "He didn't tell you about . . . ." Immediately the jurors think, "This attorney is going to be hiding things from us." (Sure you want to put your spin on the truth!)

12. Impression -- This may seem overly basic, but your attitude conveys information to the jury. Slouching, being impolite, yelling, these are the kinds of things jurors often mention as irritants. And if you are irritating a juror your message is probably not getting through.

13. Voir Dire -- There is a fine line that must be walked by the attorney in voir dire. You must get people talking, but don't let them talk so much that they begin to poison the rest of the panel. Be polite. Hear them out, but try to get to their inability to be fair before they have lectured the entire jury panel on tort reform, drunken driving, or police brutality. Remember, rarely will a Judge disqualify a whole panel. So you must get the juror's bias or prejudice out in the open quickly, with a minimum exposure to the rest of the jurors.

14. Opening Statements -- Corny as it may seem, you need to look at an opening statement as a contract with the jury. Never, ever tell the jury you will prove something that you know may or may not come to pass. Err on the side of caution at this stage. Look on those doubtful matters as bonuses which you can emphasize in closing. The danger here is that sinking feeling when opposing counsel starts reading from a transcript of your opening during his closing argument. This never fails to impress jurors and the only defense is to conservatively estimate what your evidence will show.

15. Television -- Remember that 95% of your jurors watch television 95% of the time. (Approximately.) What this should mean to you is that most witness examinations should be about the length of *Seinfeld*, occasionally *ER*, and never *Lonesome Dove*. Same with final argument. People are used to getting their entertainment and information in short, capsule portions. If you drone on, they switch the channels.

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16. Sarcasm -- This always makes you look bad. It may seem snappy at the time, but you pay for it in the jurors' opinion of you.

17. Impeachment by Deposition -- Okay, here's the premise. You've given a deposition or interview two years ago and now you're on the stand and use different words to answer the same question. Should this be grounds for impeachment? No. Not unless the words make a substantial difference in what you are saying. Unfortunately, attorneys love to impeach endlessly with depositions even when the changes are insubstantial. This is viewed by jurors as a giant waste of time. No reasonable person expects one's answer to a question to be phrased identically two years later. If the change is not significant, let it go.

Most attorneys never give the jury a road map to the result they are seeking.

18. Rules of Evidence -- The Rules of Evidence, minus the table of contents and index, are only 13 pages long. There is no reason why a trial attorney should not know them backwards and forwards. I am continually astounded by the lack of knowledge of these simple rules. Least known or remembered rules are Rules 106, 608(b), 611(c), 703, 801. Look 'em up.

19. Direct Examination -- On direct examination your client should never have to answer, "I don't know" or "I don't remember." It's a sure sign that you haven't prepared the witness. Proper preparation doesn't require that all of the answers be pre-programmed. But your witness should have seen all the exhibits you intend to ask them about and know all the important areas you intend to question about. If the witness needs to look something up or refresh recollection, do it before they get on the stand so they appear more positive about their testimony.

20. Transcript -- Remember that you may lose the case and have to appeal. The transcript will then become very important to you. The time to think about the transcript you're making is when you're making it. When witnesses refer to exhibits or gesture with their bodies, make sure the record reflects what they did. If they say a distance is from here to there, let the record reflect the approximate distance. Also make sure the answer you get means something. For instance:

Q. You didn't see the car, that's correct, isn't it?
A. No.

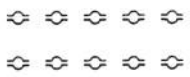
Did the witness see the car or not? Maybe by the witness's inflection you can tell, but not by the transcript.

21. Glossary and Cast of Characters -- In your opening statement it is always a good idea to define any important terms in the case and to identify who the players in this drama will be. Give the jury the information it needs up front. Explain medical or scientific terms so the jury doesn't have to wait for them to come up in direct or cross-examination. Tell them a little about each witness so they can put them in context of the whole story of the case.

22. Expert Witnesses -- Here's the simple outline for direct examination of your expert:

1) Who are you?
2) What materials did you see?
3) What are your conclusions?
4) Why?

23. Final Argument -- Somewhere in your final argument you need to give the jury a plan to reach the proper decision. This should include exactly the questions you want them to answer in the order you want them to answer. You should consider this a golden opportunity to direct the deliberations. Most attorneys never give the jury a road map to the result they are seeking. Duty, breech, causation, damages . . . lead them through it and show them how they can answer the questions in your favor. Ω



Internet Action

for The Defense has been on the Internet now since April of 1995. Comments from our readers have been very positive. (The most distant response to our "page" was from West Seneca, New York.) Anyone interested in finding us via computer should use: **www.maricopa.gov** Once there, pick "Public Defender" and you are in!

DUI Unit an Office First

by Tom Klobas, Trial Group Supervisor

Whoever said "the only constant in life is change" would certainly have felt at home here on April 15. That date marked the inauguration of the DUI Unit in Group D. Headed by Dan Carrion, and with able assistance of Bob Jung, the unit is believed to be the first time the office has administratively created a separate section to defend a specific category of crime.

Group C launched a similar unit led by Todd Coolidge who will be assisted by Rob Corbitt. [*See Editor's Note below.*]

It should be a surprise to no one that cases involving the allegation of driving while under the influence of alcohol or drugs call for a high degree of knowledge both as to technology as well as case law. To make matters worse, both of the latter are constantly in flux. The importance of keeping up with these changes becomes obvious when confronted by prosecutors who receive specific training in both areas. Something had to be done to "level the playing field." The start-up of the DUI units shows that this process has begun.

For the present, the DUI units will only handle felony aggravated DUIs and such other vehicular felonies as manslaughter, aggravated assault, endangerment and criminal damage. All indictments listing these charges and all information filings which were not resolved or pled at the justice court level will be referred to the units.

For a variety of reasons, these units will not be able to handle justice court misdemeanor cases. However, they will be available to provide support and assistance to those attorneys who do.

Our goal is to provide our clients with a defense that utilizes a high level of expertise and familiarity with both the science and the law surrounding DUI prosecutions. This can best be done by a cadre of attorneys devoted and specially equipped to work in these areas. Dan Carrion, Bob Jung, Todd Coolidge and Rob Corbitt will supply us with this sorely needed ingredient. Ω

Editor's Note: Trial Group C's DUI Unit, which became operational the first part of April, consists of Todd Coolidge, Rob Corbitt, James Leonard, Mark Potter, Cliff Levenson, Vernon Lorenz, Tony Bingham, Christine Israel, Melvin Kennedy, and Frank Sanchez. Todd Coolidge and Rob Corbitt will devote all of their caseloads to DUIs. DUIs will comprise 50% of James Leonard's caseload. The rest of the listed attorneys from Group C will handle overflow DUI cases in the southeast area.

Trial Results

Public Defender's Office:

January 30

Scott Wolfram: Client charged with two counts of aggravated DUI. Trial before Judge Jarrett ended February 5. Defendant found guilty on both counts. Prosecutor Righi.

February 7

Shelley Davis/Jamie McAlister: Client charged with second degree murder. Investigator N. Jones. Trial before Judge Hilliard ended March 20 with a hung jury, 6-2 for not guilty. On March 29 the charge was dismissed without prejudice. Prosecutor Krabbe.

February 15

Jerry Hernandez/Cary Lackey: Client charged with 14 counts of armed robbery and four counts of aggravated assault. Investigator R. Gissell. Trial before Judge Dougherty ended March 7. Defendant found guilty. Prosecutor Daiza.

February 26

Wesley Peterson: Client charged with three counts of child molestation and five counts of sexual conduct with a minor. Trial before Judge Armstrong ended February 29 with a hung jury (6 to 6). Prosecutor Cook.

Paul Ramos: Client charged with flight from pursuing law vehicle and aggravated assault. Investigator M. Breen. Trial before Judge Araneta ended March 1. Defendant found guilty. Prosecutor Fuller.

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March 4

Larry Grant: Client charged with aggravated DUI. Trial before Judge Seidel ended March 6. Defendant found guilty. Prosecutor Ainley.

March 5

Kristen Curry: Client charged with aggravated DUI. Trial before Judge Dunevant ended March 11. Defendant found guilty. Prosecutor Manning.

March 6

Peter Claussen: Client charged with first degree murder. Trial before Judge Jarrett ended March 19. Defendant found guilty of a lesser-included offense. Prosecutor Sanders.

Phil Vavalides: Client charged with aggravated DUI (with two prior felonies). Trial before Judge Schaeffer ended March 7. Defendant found guilty of aggravated DUI but not guilty of prior felonies. Prosecutor Morrison.

March 7

Jim Wilson: Client charged with two counts of aggravated assault and one count of kidnapping. Trial before Judge Seidel ended March 18 with a judgment of acquittal on kidnapping and one count of aggravated assault, and a hung jury on one count of aggravated assault. Prosecutor Barrett.

March 11

Bud Duncan/John Taradash: Client charged with second degree murder. Trial before Judge Sticht ended March 27 with a hung jury. Prosecutor O'Connor.

March 12

Kevin Burns (Advisory Counsel for Pro Per Defendant): Client charged with second degree burglary. Trial before Judge Brown ended March 12. Defendant found guilty. Prosecutor Brnovich.

Mike Hruby: Client charged with armed robbery and aggravated assault (dangerous and with four priors). Investigator N. Jones. Trial before Judge Hertzberg ended March 21. Defendant found guilty of armed robbery and aggravated assault (dangerous). Prosecutor Vercauteren.

March 18

Dennis Farrell: Client charged with three counts of aggravated assault and one count of drive-by shooting (all counts dangerous and while on probation). First trial before Judge N. Lewis had ended with a hung jury (11 to 1 for not guilty). Prosecutor and defense counsel agreed to submit case to the judge. Bench trial before Judge N. Lewis ended March 25. Defendant found not guilty on all counts. Prosecutor Palmer.

Peggy LeMoine: Client charged with one count of kidnapping, four counts of sexual assault, and one count of sexual abuse. Investigator R. Corbett. Trial before Judge Gerst ended March 25. Defendant found guilty of kidnapping and sexual abuse; not guilty of four counts of sexual assault. Prosecutor Heilman.

March 19

Kristen Curry: Client charged with theft. Trial before Judge Seidel ended March 21 with a judgment of acquittal. Prosecutor Hicks.

Robert Jung: Client charged with attempted robbery, possession of burglary tools, and possession of drug paraphernalia. Trial before Judge O'Melia ended March 21. Defendant found guilty of all charges. Prosecutor Mitchell.

James Leonard: Client charged with aggravated assault. Investigator L. Clesceri. Bench trial before Judge Barker ended April 1. Defendant found not guilty of aggravated assault, guilty of disorderly conduct. Prosecutor Pucheck.

Patricia Riggs/Tim Agan: Client charged with possession of cocaine for sale, importing/transporting marijuana for sale, and importing/transporting narcotic drugs for sale. Trial before Judge Ryan ended March 25 with a hung jury. Prosecutor Armijo.

March 20

Randy Reece: Client charged with three counts of aggravated assault and one count of disorderly conduct. Investigator N. Jones. Trial before Judge Hilliard ended March 25. Defendant found guilty. Prosecutor Johnson.

March 21

Larry Grant: Client charged with theft. Investigator R. Barwick. Trial before Judge Sheldon ended March 26. Defendant found guilty. Prosecutor Myers.

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Ray Schumacher: Client charged with aggravated assault. Trial before Judge Armstrong ended March 27. Defendant found not guilty. Prosecutor McIlroy.

Joe Stazzone: Client charged with promoting prison contraband (with two priors). Trial before Judge Katz ended March 22. Defendant found not guilty. Prosecutor Whitten.

March 25

Jamie McAlister: Client charged with residential burglary (with two priors). Investigator C. Yarbrough. Trial before Judge Dunevant ended March 28. Defendant found guilty. Prosecutor Allen.

March 26

Jim Park: Client charged with theft (with priors). Trial before Judge Brown ended March 28. Defendant found guilty. Prosecutor Mason.

March 27

Michael Gerity: Client charged with threatening and intimidating (misdemeanor). Bench trial before Judge Sticht ended March 27. Defendant found guilty. Prosecutor Casey.

Editor's Corrections to previously reported results:

January 22

Vicki Lopez: Client charged with aggravated assault on a police officer and two counts of aggravated assault (dangerous). Trial before Judge Dunevant ended January 31 with a judgment of acquittal on one count of aggravated assault; defendant found guilty of aggravated assault on a police and one count of aggravated assault (dangerous).
FOLLOW UP: The defense filed a motion for a new trial (based on prosecutorial misconduct) on the aggravated assault, dangerous. The motion was granted on March 18 and a new trial set for May 06.

Legal Defender's Office:

February 22

Craig Orent: Client charged with aggravated assault (dangerous). Investigator E. Soto. Trial before Judge Mangum ended March 14. Defendant found not guilty of aggravated assault; guilty of lesser-included disorderly conduct (dangerous). Prosecutor P. Hicks.

February 27

Catherine Hughes: Defendant charged with drive-by shooting (dangerous) and aggravated assault (dangerous). Investigator B. Abernethy. Trial before Judge D'Angelo ended March 6. Defendant found not guilty. Prosecutor S. Lynch. Ω

Bulletin Board

◆ ***New Support Staff:***

Stacy Martin is the new afternoon receptionist in Trial Group C. Ms. Martin, who is working on her A.A. in Education, started with our office on March 26.

Renee Rivera has been selected as the new legal secretary for Group B where she will begin on April 29. Ms. Rivera has a B.A. in Criminal Justice from the University of Arizona and two years of legal secretarial experience (most recently with Southern Arizona Legal Aid).

Judy Segerstrom started as Group C's new legal secretary on April 01. Ms. Segerstrom has extensive experience in the legal arena, including a J.D. from California Southern and five years as a legal secretary.

◆ ***Moves/Changes:***

Russ Born has been appointed as the new Training Director, replacing Christopher Johns who will move to our Appeals Division. Mr. Born began his tenure in our office as a trial attorney in 1989, and was both a trial group coordinator and team leader for Trial Group A. His past experience includes a brief stint at the Maricopa County Attorney's Office and nine years as an attorney with the Cook County Public Defender's Office in Chicago. Mr. Born will move to the Training Division on June 3.

Donna Elm has been selected as the new Supervisor for Trial Group D, replacing Tom Klobas who has requested an assignment in Group C. Ms. Elm joined our office in 1990, and served as a team leader for Trial

(cont. on pg. 11) ☞

Group B. She has a master's degree in counseling and was the director of community correctional treatment centers for four years before entering law school. Ms. Elm will take on her new assignment in Trial Group D on July 1.

Larry Grant has been named the new Supervisor for Trial Group B, replacing Brian Bond who will serve in Trial Group A. Mr. Grant has been a trial attorney with our office since 1989, and has served as a trial group coordinator and team leader with Trial Group D. Prior to coming to our office, he worked as a trial attorney with the Public Defender's Office in Detroit for five years. Mr. Grant assumed his new duties on April 15.

Joe Shaw, Deputy Public Defender, retired this month after serving in our office since March 1975. Mr. Shaw started as a trial attorney and ended his career as our Guilty Arraignment attorney. His dedication to our office was unmatched, and a Service Award has been created in his name to be given annually to individuals who exemplify his outstanding commitment to indigent defense.

◆ *Speakers Bureau*

Helene Abrams, Juvenile Division Chief, appeared on March 22 at the Arizona Attorney General's Juvenile Justice Forum. Ms. Abrams served on a panel with Barbara Cerepanya, Private Counsel; Frank Carmen, Administrative Office of the Court; Jerry Landau, Maricopa County Attorney's Office; Linda Valdez, *Arizona Republic*; and John McDonald, Assistant Attorney General. After each panel member gave a brief presentation on issues relating to the juvenile justice system, questions were addressed, and Senate Bill 1363 and the Governor's Initiative were discussed.

Susan Corey, Deputy Public Defender, addressed Saguaro High School students at their Career Day on April 16. Ms. Corey talked to various groups about the legal profession and indigent defense work.

Colleen McNally, Deputy Public Defender, spoke to an eighth-grade class from Papago School as part of the Courtroom Experience on March 20. A week later Ms. McNally met with pre-law students from ASU's Phi Alpha Delta, showing them different criminal courts.

Diana Squires, Deputy Public Defender, was asked to sit on the opening panel discussion for the National Legal Aid and Defenders Association (NLADA) Conference in Albuquerque this month. The panel focused on the client-centered defense. In addition to looking at client representation, trial v. plea agreement, and alternative sentencing considerations, the panel addressed what attorneys can do to avoid cynicism. Following the panel discussion, Ms. Squires participated in workshops which dealt with participants' current cases.

◆ *Miscellaneous*

The annual index of ***for The Defense*** articles (from the newsletter's inception through December 1995) is now available. Anyone who would like a copy may obtain one from Sherry Pape in our Training Division.

Amateur Photographers (or professional ones) are needed to take group photographs next month in Patriot's Park. Must work ~~cheap~~ free. To sign up, please call Amy Bagdol at 506-3061.

Carol Carrigan, Deputy Public Defender--Appeals Division, was appointed last month as the Chairperson of the Appeals Committee of Arizona Attorneys for Criminal Justice (AACJ). This newly created committee will handle questions and tackle issues (including legislation) relating to appeals in Arizona criminal cases.

Computer Corner

This column is designed to provide simple computer tips helpful to people in the legal field. These tips are fashioned for WordPerfect 5.1 in DOS. If you have any problems, questions or suggestions that you would like to share, please contact Ellen Hudak in Administration (506-6633).

Compose Options:
The WordPerfect system includes many special characters beyond those found on our keyboard. Lists of these characters are provided in the back of the WordPerfect Reference Manual. In fact, there are 11 different sets that we can access. Following are two different methods of retrieving these characters.
Both keystrokes perform the same function in the normal editing screen.

Ctrl-V
When you use the method of Ctrl-V, you will note the prompt **Key =** appears in the lower left-hand corner of your screen. You then type the numbers for the desired character, press *Enter* and the desired character will appear.

Ctrl-2
When using this method of Ctrl-2, Although no prompt will appear, after you have typed in your numbers and pressed *Enter*, the same character will appear as in the **Ctrl-V**.

1) Type either Ctrl-V or Ctrl-2.
2) Type the number of the set you have selected for the desired character.
3) Type the comma (,).
4) Type the number of the character you want to create.

An alternative to creating these characters with these methods, you can compose diacriticals (characters representing a certain phonetic value) by typing **Ctrl-V**, the letter you want, and the symbols. Example, to create í to would type Ctrl-V, ' and the i.

•	Ctrl-2 or Ctrl-V	4,3 or *.	ç	Ctrl-2 or Ctrl-V	4,19 or	c/ (or /c)
½	Ctrl-2 or Ctrl-V	4,17 or /2	—	Ctrl-2 or Ctrl-V	4,34 or	m-
¼	Ctrl-2 or Ctrl-V	4,18 or /4				

Dot Leader - Quick
To create a dot leader tab anywhere in your document, press (Home), (Home), (Tab). No setup is needed and you can create a dot leader anywhere in your document that you need to.

Deleting "Field:1" Prompt
When you accidentally hit the "End Field" (F9) key and the prompt in the left-hand corner appears, you can easily remove the prompt by pressing (Home), (Home), (Up Arrow) to rewrite the screen. Press (Ctrl-Home) twice to return your cursor to its original position.

Brainteaser for April.[1]

(Answer will be in May's issue of "*for The Defense*")

JUST FOR FUN

Boxing

[1]Answer to March's "Brainteaser" is **Boxcars**